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UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

KEVIN CLAUSEN,

Plaintiff,

v.

STATE OF NEVADA, et al.

Defendants.

Case No. 2:22-cv-00279-ART-NJK

ORDER DISMISSING AND CLOSING
CASE

Plaintiff Kevin Clausen brings this lawsuit to redress constitutional violations that he claims to have suffered while he was incarcerated at High Desert State Prison. On August 11, 2022, this Court instructed Clausen to file an amended complaint and either pay the \$402 filing fee for a civil action or properly apply to proceed *in forma pauperis* (“IFP”) by September 12, 2022. (ECF No. 8). That deadline expired and Clausen has not filed an amended complaint and either paid the filing fee or filed an IFP application. Nor has Clausen otherwise responded to the Court’s August 11, 2022, order.

The law permits a district court to dismiss an action based on a party’s failure to comply with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action on this ground, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

1 The first two factors, the public's interest in expeditiously resolving this
2 litigation and the court's interest in managing its docket, weigh in favor of
3 dismissing the plaintiff's claims. The third factor, risk of prejudice to defendants,
4 also weighs in favor of dismissal because a presumption of injury arises from the
5 occurrence of unreasonable delay in filing a pleading ordered by the court or
6 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
7 1976). The fourth factor—the public policy favoring disposition of cases on their
8 merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic
10 alternatives can be used to correct the party's failure that brought about the
11 court's need to consider dismissal. *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992
12 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the
13 party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan*
14 *v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts "need not exhaust
15 every sanction short of dismissal before finally dismissing a case, but must
16 explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d
17 1421, 1424 (9th Cir. 1986). Because this action cannot proceed until and unless
18 Clausen files an amended complaint, and this Court cannot operate without
19 collecting reasonable fees, the only alternative is to enter a second order setting
20 another deadline. But the reality of repeating an ignored order is that it often only
21 delays the inevitable and squanders finite resources along the way. The
22 circumstances here do not indicate that this case will be an exception: there is
23 no indication that Clausen needs additional time or did not receive the Court's
24 order. Setting another deadline is not a meaningful alternative given these
25 circumstances. So the fifth factor favors dismissal.

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1 Having thoroughly considered these dismissal factors, the Court finds that
2 they weigh in favor of dismissal. It is therefore ordered that this action is
3 dismissed for failure to follow a court order.

4 The Clerk of Court is directed to enter judgment accordingly and close this
5 case. No other documents may be filed in this now-closed case.

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7 DATED THIS 21st day of September 2022.

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11 ANNE R. TRAUM
12 UNITED STATES DISTRICT JUDGE
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